



IN THE
Supreme Court of the United States

OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her official capacity
as Director, California Department of Social Services,
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, and
RUSSELL S. GOULD, Director, California Department of
Finance,

Petitioners,

—v.—

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P.
BERTOLLT, on behalf of themselves and all others similarly
situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF AMICI CURIAE
NOW LEGAL DEFENSE AND EDUCATION FUND
(Additional Amici Listed on Inside Cover)
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE

Amici Curiae file this brief in support of Respondents. The specific statements of Amici Curiae are set forth in Appendix I.¹

SUMMARY OF ARGUMENT

Section 11450.03 of the California Welfare and Institutions Code creates a classification that deters interstate migration and penalizes those who exercise their right to travel. The classification disfavors residents who have lived in California for less than one year by limiting Aid to Families with Dependent Children ("AFDC") benefits to the amount that would have been available in the resident's prior home state. Victims of domestic violence, who often are subject to economic deprivation as well as physical and emotional abuse, are particularly vulnerable to the harsh effects of the law. Absent adequate financial support, a battered woman's decision to flee an abusive relationship will be constrained by the risk of homelessness, malnutrition and poverty.

The statute is a deterrent to victims of domestic violence who, because they may be stalked by former partners or because they must turn to family and friends for crucial emotional or financial support, often must flee from abuse across state lines. Many abused women, particularly those who flee with their children, have such limited economic resources that their flight from violence results in temporary indigency. The availability of resources sufficient to live independently is a significant factor in a victim's ability to separate from her batterer. The

¹ Amici Curiae file this brief with the consent of all parties. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 37.3 of the Rules of this Court.

California statute in question would deny even the minimally adequate financial assistance deemed necessary to survive in the state and would reduce substantially a victim's ability to flee. Thus, the statute acts to deter interstate migration by victims of domestic violence.

Those battered women who nevertheless flee to California will be penalized for their exercise of the right to travel. Because the availability of financial assistance plays such a critical role in ending the cycle of domestic violence by enabling the victim to leave the abusive relationship, the statute's differential treatment of newly arrived residents will severely burden the vast majority of battered women who have fled to California. Victims of domestic violence who leave abusive relationships face a high risk of homelessness and other poverty-related ills. Lower AFDC support would exacerbate the financial hardship faced by battered women and their children at a time when they are least able to afford it. For battered women who are unable to support themselves and their children, a decrease in AFDC benefits increases the likelihood that they will be forced to return to their abusive partners.

ARGUMENT

I. BECAUSE THE CALIFORNIA STATUTE CREATES A DURATIONAL RESIDENCY REQUIREMENT THAT RESULTS IN UNEQUAL TREATMENT OF RESIDENTS BASED SOLELY ON THE LENGTH OF TIME THEY HAVE LIVED IN CALIFORNIA, THE STATUTE MUST BE SUBJECT TO STRICT SCRUTINY

Section 11450.03 of the California Welfare and Institutions Code is a durational residency requirement that divides otherwise similarly situated needy California

residents into two classes: those who have resided in California for more than one year; and those who have not. Under the statute, members of the former class are eligible for an AFDC benefit amount that is minimally adequate for survival in the State of California. Notwithstanding the marginal adequacy of that amount, the latter class of needy California residents are eligible for the lesser of the maximum payment allowable in their state of former residence or the payment amount in California.²

For Plaintiffs, like most needy families who have moved to California³, the durational residency requirement burdens the right to travel by reducing the AFDC benefit available to a level significantly below that afforded to longer term residents. Plaintiff Deshawn Green and her two children moved to California from Louisiana in an effort to escape domestic violence. J.A. 71. She applied for AFDC several days after arriving in California. *Id.* Had the statute not been enjoined by the District Court,⁴ Ms. Green's monthly grant would have been limited to \$190, the maximum allowable grant in Louisiana. *Id.* A

² For families emigrating from those few states in which the maximum allowable AFDC payment is higher than in California, the grant would be calculated under California's formula.

³ Although this brief addresses the particular effects of the durational residency requirement on battered women and their children, it is important to note at the outset that the statute's effect is borne almost entirely by women. In 1992, 89.4% of AFDC recipient families reported were headed by single mothers. Committee On Ways and Means, U.S. House of Representatives, 103d Cong., 2d Sess., *Overview of Entitlement Programs* 400 (Comm. Print 1994) ("1994 Greenbook").

⁴ *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994).

longer term California resident with the same size family would have been eligible for \$624.⁵ *Id.* at 72.

The right to interstate travel "has long been recognized as a basic right under the Constitution." United States v. Guest, 383 U.S. 745, 757-58 (1966). A residency requirement is subject to strict scrutiny if it deters, or is intended to deter interstate migration, or if it will penalize the exercise of the right to travel. Attorney General of New York v. Soto Lopez, 476 U.S. 898, 903 (1986) (plurality opinion), 920-21 (O'Connor, J. dissenting).⁶

As *amici* will discuss, by calculating AFDC benefit amounts based on whether and from where a needy family has recently emigrated, the California statute will deter victims of domestic violence from exercising their right to travel from one state to another. Interstate mobility and economic supports are critical to a battered woman's successful escape from domestic violence. Nevertheless, the durational residency requirement denies both to victims of domestic violence. The resulting deterrent effect of the

⁵ Plaintiff Diana Bertolli would have received \$280 per month for herself and her child instead of \$540, J.A. 81, and Plaintiff, Debby Venturella would have received \$341 instead of \$624 for herself and two children. *Id.* at 76. Since Plaintiffs applied for AFDC in California, the grant for a family of three was reduced from \$624 to \$607. 1994 Greenbook at 368. The maximum allowable payments for eligible AFDC recipients in every state except Alaska, Connecticut, Hawaii, Vermont and some regions of New York are lower than in California. 1994 Greenbook at 368-69.

⁶ As Plaintiffs state, although presence of any one of the three categories — deterrent purpose, an actual deterrent or penalty — will trigger strict scrutiny, all three are raised by the California durational residency requirement. *Amici* adopt the argument of Plaintiffs and address in this brief the latter two categories as they affect battered women.

statute can only be justified by a compelling government interest.

According to the standards governing analysis of durational residency requirements established by this Court, the relevant question is not whether former residents of a state are being treated the same as those who still live in that state but, rather, whether all current residents of the same state are treated equitably. Thus, it is irrelevant that under the statute, residents of California who emigrated from Louisiana within the twelve months preceding their receipt of AFDC would receive the same benefit amount as current residents of Louisiana.⁷ The right to travel "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." Soto-Lopez, 476 U.S. at 905 (1986); see also Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982). Residents of California who otherwise are eligible for the AFDC support in the amount necessary for basic subsistence in California, are penalized by the durational residency requirement which operates to deprive them of the basic necessities of life by permitting support only at the level necessary in, for example, as in Plaintiffs' cases, Louisiana, Colorado or Oklahoma.

For Plaintiffs, as for all battered women fleeing domestic violence, the deprivation is particularly onerous. Adequate financial assistance often is the key factor that

⁷ Furthermore, as the District Court noted "the measure cannot fairly be said to provide the same payment as new residents could have received in the state of their prior residence since the cost of living, particularly housing, varies so substantially from state to state and generally is much higher in California than elsewhere." Green v. Anderson, 811 F. Supp. at 521.

enables battered women and their children to remain separated from their abusers. Denial of subsistence level benefits may force battered women to return to dangerous, and often life-threatening situations.

II. BATTERED WOMEN WILL BE HARMED BY THE DURATIONAL RESIDENCY REQUIREMENT BECAUSE THEY FREQUENTLY MUST FLEE ACROSS STATE LINES TO PROTECT THEMSELVES AND THEIR CHILDREN

A. Because Separation Is The Most Dangerous Time For Many Battered Women, Victims Of Domestic Violence Often Must Cross State Lines To Reach Safety

Between three and four million women each year are battered by husbands, partners and boyfriends. Domestic Violence: Not Just A Family Matter: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103rd Cong., 2nd Sess. (June 30, 1994) (statement of Senator Joseph Biden Jr.); Joan Zorza, Women Battering: High Costs and the State of the Law, 28 Clearinghouse Rev. 383, 386 (1994) [hereinafter State of the Law]; Patricia Horn, Beating Back the Revolution, Dollars and Sense, Dec. 1992 at 12. Half of these women are beaten severely and in 30 percent of the domestic violence incidents reported, assailants use weapons. Joan Zorza, supra, State of the Law, at 386. In the United States, 31.5 percent of women killed are murdered by their husbands. Id. at 387. Batterers exert control over their partners' lives by force, threat of force, and emotional and economic abuse.

This Court previously has acknowledged the danger and magnitude of the domestic violence epidemic. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. ___, 112 S. Ct. 2791, 2826-30 (1992). In Casey, this Court invalidated, under an undue burden standard, a spousal notification provision of an abortion statute, concluding that

there are millions of women in this country who are the victims of regular physical and psychological abuse at the hands of their husbands. Should these women become pregnant, they may have very good reasons for not wishing to inform their husbands of their decision to obtain an abortion. . . . Many may have a reasonable fear that notifying their husbands will provoke further instances of child abuse Many may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support

Id. at ___, 112 S. Ct. at 2828-29.

As the Court noted in Casey, there is a positive correlation between spousal abuse and child abuse. Id. at ___, 112 S. Ct. at 2828. Like Plaintiffs, many women attempt to flee domestic violence not only to protect themselves, but to protect their children. Children of battered women are twice as likely to be abused and their fathers are three times more likely to be their abuser. Mildred Pagelow, Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases, 8 Violence and Victims 69, 77 (1993) [hereinafter Justice for Victims]; Violence Against Women: Domestic Violence Hearing Before the

Senate Judiciary Committee, 101st Cong., 2nd Sess. 7 (Dec. 11, 1990) (statement of Susan Kelly-Dreiss, Pennsylvania Coalition Against Domestic Violence).

Between 50 and 90 percent of battered women attempt to escape their abusive environment. Patricia Horn, *supra*, at 21. However, their efforts are hampered, and often frustrated, by the economic deprivation that frequently accompanies domestic violence, *see* discussion *infra* at 15-22, and by the volatile response of the abuser to the victim's departure. Abusers do not lightly relinquish control over their former partners. Typically, an abuser searches desperately for his partner once she has fled. For many abused women, the only way to stop violence that continues after separation is to move a great distance away from the abuser. Plaintiff DeShawn Green felt that it would not be safe for her and her children to live in the same state as her batterer. J.A. 72. Plaintiff Diana Bertolli moved to California from Colorado because she was afraid for her own safety and the safety of her son. J.A. 78. Testifying before the House Subcommittee on Crime and Criminal Justice, one victim of domestic violence described her flight:

Sixteen years ago I packed everything that would fit into a single suitcase, left behind the few possessions I owned, took my two month old baby girl and ran for my life. . . . As I got on the airplane in Dallas that day, I knew that I would never go back and that I could now begin to create a future for my daughter and myself, a future of freedom and safety.

Domestic Violence: Not Just A Family Matter: Hearing Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 103rd Cong., 2nd Sess. (June 30, 1994) (statement of Karla DiGirolamo).

Leaving an abusive relationship does not always put an end to the violence. Department of Justice statistics show that divorced and separated women report being battered 14 times as often as women still living with their partners. Caroline Harlow, U.S. Dep't of Justice, Female Victims of Violent Crime 5 (1991). In fact, battering often increases after separation, as batterers escalate their violence in an attempt to coerce the battered woman into reconciliation or to retaliate for her departure. Mildred Pagelow, *supra*, Justice For Victims, at 72; Margo Wilson and Martin Daly, Spousal Homicide Risk and Estrangement, 8 *Violence and Victims* 3 (1993); *see* Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 5-6 (1991) ("At the moment of separation...the batterer's quest for control often becomes most acutely violent and potentially lethal"). Testifying before Congress, one victim described her batterer's response when she tried to escape with her two small children: "You lied to me when you said our wedding vows and said until death do we part. That's the way its going to be." Oversight Hearing on the Issue of Violence Against Women Before the Subcommittee on Crime and Criminal Justice of the House Committee on the Judiciary, 102d Cong., 2nd Sess. 7 (Feb. 6, 1992) (statement of Jane Doe on Behalf of Victim Services). Battered women who leave their partners face an elevated homicide risk. Margo Wilson and Martin Daly, *supra*, at 7. The danger of separation assault is particularly acute during the first few months of separation. *Id.* at 10; *see* Martha Mahoney, *supra*, at 6 (naming the escalating violence "separation assault" and identifying it as a common thread uniting "suits on enforcement of temporary restraining orders, the cases with dead women. . . and the cases with dead men.").

The criminal law is replete with cases describing serious bodily injury and murder committed by an abuser in

response to a battered woman's flight. See Pagelow, *supra*, *Justice For Victims*, at 72. For example, in *Godfrey v. Georgia*, 446 U.S. 420 (1980), the petitioner was convicted of murdering his wife soon after she had left the marital home and filed for divorce. The Court noted that Godfrey had abused his wife during the marriage, *id.* at 424 n.3, and described the victim's departure as following a particularly violent episode. *Id.* at 424.

Increased violence resulting from a battered woman's escape also has been evident in cases in which battered women have killed their abusers. In *Kansas v. Hundley*, 236 Kan. 461, 693 P.2d 475 (1985), the Kansas Supreme Court described the events preceding the killing:

This was all of [decedent's] violence [defendant] could take. She moved to the Jayhawk Junior Motel. As in typical wife-beating cases, her moving did not eliminate the problem. [Decedent] then started a pattern of constant harassment. He would call her night and day to threaten her life and those of her family. She was so frightened she started carrying a gun.

On . . . the day of the shooting, [defendant] had seen [decedent] early in the day, at which time [he] told [her] he was going to come over and kill her. That night she heard a thumping on her motel door while she was in the bathroom. By the time [she] got out of the bathroom [he] had broken the door lock and entered the room. His entry was followed by violence. [She] was hit and choked and life was again threatened.

Id. at ___, 693 P.2d at 476. Similarly, in a case involving the use of battered woman syndrome evidence and demonstrating the severity of separation assault against battered women, the Supreme Court of Pennsylvania

detailed the history of violence between the defendant and decedent:

[S]he agreed to meet with him to make it clear that she did not want to see him any more. When [defendant] asked [decedent] to take her home from this meeting, [he] drove instead to a shopping center where he dragged her out of the car and then repeatedly attempted to run over her with the car. Failing to run over [her], [he] finally jumped out of the car and punched [her], breaking her nose and rendering her semi-conscious.

Pennsylvania v. Stonehouse, 521 Pa. 41, 555 A.2d 772, 775 (1989).

Even escape to a shelter for victims of domestic violence is not always successful. Many batterers will stalk their victims. Using personal contacts or creative resources, they are able to track down the addresses of local shelters. Kathleen Ferraro and John Johnson, *The New Underground Railroad*, 6 *Studies in Symbolic Interaction* 377, 380-83 (1985) (describing case histories in which batterers got information from friends on the police force; used visitation with children to locate their victims; or begged for information from sympathetic taxi drivers).

State legislators have begun to recognize that many women are relentlessly terrorized by men with whom they previously had a relationship and that existing laws and orders of protection cannot stop the abuse. California was the first state to adopt an "anti-stalking" law in an attempt to deal with the problem.⁸ Forty-eight states and the

⁸ Rosalind Resnick, *California Takes Lead: States Enact "Stalking" Laws*, Nat'l L.J., May 11, 1992, at 3, 27 (California enacted law in

District of Columbia now have anti-stalking laws.⁹ Despite the widespread enactment of anti-stalking laws, batterers continue their persistent terrorism of women who have left them.¹⁰ Judicial opinions upholding convictions under the stalking laws reveal the menacing nature of batterers continuing abuse:

Following appellant's separation from [the victim] in 1987, he engaged in a pattern of conduct that frequently involved following her and maintaining surveillance on her residence. In the summer of 1992, after [the victim] began dating Bill Carter, appellant's surveillance activities increased dramatically. These activities included driving up and down the dead-end street where [the victim] lived, parking within sight of the residence, and watching the house for extended periods of time. . . . In July 1992, [the victim] was "alarmed" after discovering appellant had followed her to an out-of-town wedding

1990 after five women were murdered in succession by former husbands or boyfriends.).

⁹ M. Katherine Boychuk, Comment, Are Stalking Laws Unconstitutionally Vague or Overbroad?, 88 Nw. U. L. Rev. 769 n.1 (1994).

¹⁰ Recognizing the extent of the problem, Congress recently amended 28 U.S.C. § 534 by adding a provision granting courts access to national criminal information databases for use in domestic violence or stalking cases. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 §40601, 108 Stat. 1796, 1994-51. That provision also authorized federal and state agencies to enter into databases information regarding arrests, convictions and warrants for stalking and domestic violence. Id.

On September 19, 1992, at 7:00 a.m. Mr. Carter awoke to a telephone call from a male caller who stated, "If you don't stop seeing her, I'm going to shoot both your asses." . . .

The evidence established that in response to appellant's threat and course of conduct, [the victim carried tear gas in her purse, had motion detector lights installed on the outside of her home, and "slept with a hammer" beside her bed. She watched for appellant everywhere she went and on one occasion, she obtained a police escort

Woolfolk v. Virginia, __ Va. __, 447 S.E.2d 530, 531-32 (Ct. App. 1994).

In an effort to provide escape from the most persistent abuser, battered women's shelters and service providers have banded together, often informally, in what has been described as a modern incarnation of the "underground railroad." Kathleen Ferraro and John Johnson, supra, at 378. The underground railroad enables women to flee to other cities and states and begin a violence-free life for themselves and their children.¹¹ For one victim of domestic violence, "what she needed was an escape route to a city where neither she nor [her batterer] had other contacts or resources. This is precisely what the underground railroad provided. She was whisked off to a city about 2,000 miles away" Id. at 381.

¹¹ In recognition of battered women's need for secrecy as they flee under these circumstances, the United States Postal Service has been ordered to "promulgate regulations to secure the confidentiality of domestic violence shelters and abused person's addresses." 42 U.S.C. § 13951, added by Pub. L. No. 103-322 § 40281 (1994).

B. Having Made The Decision To Escape, Victims of Domestic Violence Often Must Seek Shelter And Support From Family Members Who Live In Other States

Having made the decision to flee, women in abusive relationships often must move to another state to receive crucial emotional support and transitional shelter from families and friends while they try to put their lives back in order. See Lee H. Bowker, Beating Wife Beating 11, 75, 136 (1983); Edward W. Gondolf and Ellen R. Fisher, Battered Women as Survivors: An Alternative to Treating Learned Helplessness 28 (1988).

Plaintiffs are good examples of this pattern. DeShawn Green left her abusive partner in Louisiana to return to her childhood home, Sacramento, California, hoping to take shelter with her mother. J.A. 71. Debby Venturella left her increasingly abusive husband in Oklahoma and moved with her child to California to stay with her parents and grandfather. J.A. 75. Diana Bertolli and her son moved in with her uncle in California because she feared that the partner she left behind in Colorado was a danger to them. J.A. 80. Many women in Plaintiffs' position, with no place else to turn, seek help from relatives in distant locations. See, e.g., Kansas v. Stewart, 243 Kan. 639, 763 P.2d 572 (1988) (battered wife fled from Kansas to her sister's home in Oklahoma).

Considering a challenge to a one-year county residency requirement for free medical care, this Court in Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), noted the deterrent effect of the statute on one segment of the population:

A person afflicted with a serious respiratory ailment, particularly an indigent whose efforts to provide a living for his family have been inhibited by his incapacitating illness, might well think of migrating to the clean dry air of Arizona, where relief from his disease could also bring relief from unemployment and poverty. But he may hesitate if he knows that he must make the move without the possibility of falling back on the State for medical care

Id. at 257. Battered women, even more than the ailing indigents in Maricopa, must emigrate to find relief from the violence in their homes. By denying newly arrived residents the means to acquire basic necessities, California's durational residency requirement effectively limits the escape routes available to families that need to flee across state lines. As a result, the statute deters the exercise of the right to migrate between states and must be subject to strict scrutiny. See, e.g., Soto-Lopez, 476 U.S. at 903 (plurality opinion), 920-21 (O'Connor, J. dissenting).

III. THE CALIFORNIA DURATIONAL RESIDENCY REQUIREMENT DETERS BATTERED WOMEN'S EXERCISE OF THEIR RIGHT TO TRAVEL

A. The Residency Requirement Will Burden The Right To Travel Of Battered Women Whose Escape From Abuse Will Increase Their Economic Need

Because the economic condition of battered women's lives is desperate, the durational residency requirement will have a devastating effect on their ability to flee domestic violence. In Shapiro v. Thompson, 394 U.S. 618, 622

(1969), this Court invalidated a one-year waiting period for the receipt of welfare benefits reasoning that the statutes in question were

. . . well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute.

Id. at 629. To preserve their safety and the safety of their children, Plaintiffs in this case, as well as many other battered women and their children, crossed state lines in order to begin a new life. As *amici* discuss *infra* at 16-19, many battered women's financial needs are most acute when they first separate from their batterers. The denial of adequate financial assistance at this critical time will "chill the assertion of [the right to travel] by penalizing those who choose to exercise [it]." *Id.* at 631 (citing *United States v. Jackson*, 390 U.S. 570, 581 (1968)).

While remaining in abusive relationships, battered women often are subject to complete control and financial isolation by their batterers. Battered women's economic vulnerability is exacerbated by their need to flee persistent and escalating violence. Women frequently must leave quickly and secretly without time to pack. Women of all income levels often must leave everything behind. Barbara Davidson and Pamela Jenkins, *Class Diversity in Shelter Life*, 1989 *Social Work* 491, 492. As a result, many women must escape and hide from a batterer with very few resources, often consisting only of money they have managed to hide or scrape together over long periods of time. See, e.g., Lewis Okun, *Women Abuse: Facts*

Replacing Myths 69 (1986); Del Martin, *Battered Wives* 84 (1976) (citing study where a woman managed to save \$1.75 over a two-year period. Adding that to the five dollars her grandmother sent her for Christmas, she had just enough to buy bus tickets).

Women who flee usually take their children with them and thus have additional financial responsibilities. Barbara Davidson and Pamela Jenkins, *supra*, at 492. Because battered women may seek to protect themselves and their children by trading financial support or distribution of assets for more protective custody or limitations on the batterers' visitation with their children, they often are unable to rely on sources of support available to other single parents. Mildred Pagelow, *supra*, *Justice For Victims*, at 74; The Family Violence Project, *Family Violence: Improving Court Practices* [Recommendations from the National Council of Juvenile and Family Court Judge's Family Violence Project] (1990). In some instances, abused women are, legitimately, too afraid to seek child support or maintenance because they do not want any contact with their abuser. Patricia Horn, *supra*, at 22. Where women do pursue child support or divorce litigation, batterers often will retaliate by waging financial warfare. A batterer may, for example, empty the joint bank accounts and prolong divorce or custody proceedings to increase the victim's legal costs. See *id.* at 21.

When less drastic measures have not stopped the abuse and harassment, some women have not only fled, but "gone underground," cutting off all contact with their former lives and adopting new names. See, e.g., Kathleen Ferraro and John Johnson, *supra*, at 378. As a result, they encounter other obstacles to financial stability. They cannot seek child support because it would alert the man stalking them to their new location. Cf. 42 U.S.C. § 602(a)(26) (1991);

45 C.F.R. §§ 232.12, -.42 (1992) (AFDC recipients are released from obligation to cooperate with state's child support collection efforts if doing so would threaten physical or emotional harm). They also cannot try to recover possessions left behind in the initial escape and may face difficulty obtaining a new job because they cannot risk giving old employers as references for fear that either the potential employers would learn their true identities or their old employers would discover their new locations.

Women's escape from violence in their own homes is dependent, to a great extent, on available financial resources. See discussion *infra* at 22-25. Without adequate income support, women who leave battering relationships face a high risk of becoming homeless. Battered women with or without children comprise a significant portion of the homeless population. Joan Zorza, Woman Battering: A Major Cause of Homelessness, 25 Clearinghouse Rev. 421, 421 (1991) [hereinafter Homelessness]; Donna Mascari, Comment, Homeless Families: Do They Have a Right to Integrity?, 35 UCLA L. Rev. 159, 163 (1987). According to one recent survey of women housed in a shelter for victims of domestic violence, when asked to specify what resources they needed, 41 percent of the women seeking to end abusive relationships described housing as a necessary resource. Cris M. Sullivan, et al., After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter, 7 Violence and Victims 267, 272 (1992). Without access to the support necessary to survive at a minimal level, a victim of domestic violence and her children may be forced to choose between abuse or homelessness and indigency. For instance, Plaintiffs themselves were unable to find affordable housing in California with the reduced grant amount. J.A. 72, 76, 81.

Section 11450.03 of the California Welfare and Institutions Code would only further diminish the economic resources available to victims of domestic violence.¹² Faced with poverty and homelessness, battered women, particularly those with children often will

balance the possible harm to the children through inadequate housing with the harm from maintaining the relationship. Unless the children are threatened directly or indirectly, the woman may well choose for

¹² Battered women with children face significant financial obstacles as a result of their abusers' conduct towards them. However, these women and their families also must confront the economic hurdles facing all female-headed households. In California, fewer than half of all children with court-ordered child support receive money from their noncustodial parent. Grim Lives of State's Kids, San Francisco Examiner, Sept. 25, 1994 at B-1 (reporting recent study by Children Now.) By some estimates, absent parents owe \$18 billion in uncollected child support. Patricia Horn, *supra*, at 22. This has a substantial negative impact on women who head 78 percent of all single-parent households and 88 percent of poor single-parent families. Population Reference Bureau, Inc., What the 1990 Census Tells Us About Women: A State Factbook 20, 32 (1993). In the third quarter of 1994, women who worked full-time earned only 77.9 percent of the median earnings for men. Bureau of Labor Statistics, Usual Weekly Earnings of Wage and Salary Workers: Third Quarter 1994 (Oct. 26, 1994). Fewer than half of all employed women are full-time year-round workers. Population Reference Bureau, Inc., *supra*, at 85. This is significant because families headed by part time workers are four times more likely to be poor. General Accounting Office, Report to the Chairman, Subcommittee on Employment and Housing, Committee on Government Operations, House of Representatives, Workers at Risk: Increased Numbers in Contingent Employment Lack Insurance, Other Benefits 5-6 (1991). When the part-time worker is also a single parent, the family is eight times as likely to be poor. *Id.* For working poor women, they face the additional cost of child care which often amounts to 23 percent of their income. 1994 Greenbook at 541. For nonpoor families, child care costs represent 9 percent of their income. *Id.*

them rather than herself. In a very real way, she is choosing between known and unknown dangers

Martha Mahoney, *supra*, at 23. Because the California statute poses a danger of homelessness and extreme deprivation to a battered woman and their children, it will deter the flight of battered women from abusive home environments.

B. Battered Women Often Are Economically Dependent On Their Abusers And Thus Have Substantial Economic Needs That Will Not Be Met By Reduced AFDC Benefits

Because many domestic violence victims are economically dependent on the men who abuse them, few victims have the resources necessary to begin a new life for themselves and their children. Batterers commonly isolate battered women from financial resources. *See Casey*, 505 U.S. ___, 112 S. Ct. at 2828 (citing Lenore Walker, *The Battered Woman Syndrome* 28 (1984)). For example, many battered women do not have ready access to cash, checking accounts, or charge accounts. Lisa G. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 Harv. J. on Legis. 61, 90 (1984). One study showed that 27 percent of battered women had no access to cash, 34 percent had no access to a checking account, 51 percent had no access to charge accounts, and 22 percent had no access to a car. Lenore Walker, *supra*, at 28. Batterers economically isolate women of all income levels. Lisa Freedman, *Wife Assault in No Safe Place* 47 (Connie Guberman and Margie Wolfe, eds. 1985); Patricia Horn, *supra*, at 21. This economic isolation may itself increase the violence. According to experts on domestic violence, the more economically dependent a woman is on her batterer, the more likely she is to be at risk for serious

injury. Michael J. Strube and Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 1983 J. of Marriage and the Fam. 785, 786.

Some batterers who are distrustful of any outside contact their partners may have, forbid their partners from working outside the home. *See* Mildred D. Pagelow, *Women Battering: Victims and Their Experiences* 150 (1981); Patricia Horn, *supra*, at 12. In one study, one third of the women surveyed reported that their batterers had prohibited them from working. Melanie Shepard and Ellen Pence, *The Effect of Battering on the Employment Status of Women*, 3 *Affilia* 55 (1988). Plaintiff Diana Bertolli illustrates a similar pattern. She was forced to discontinue her school attendance when her abusive partner confined her to her home. J.A. 80.

The situation of battered women who work outside the home is little better than those who do not. They often are forced to relinquish their earnings to batterers who insist upon handling all the money in the relationship. Lenore Walker, *Abused Women and Survivor Therapy* 62 (1994); *see also* Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 Wash. L. Rev. 267, 280-81 & n.60 (1985). Furthermore, battered women's efforts to become financially independent also are punished. *See* Richard Gelles and C.P. Cornell, *Intimate Violence in Families* 75 (1985) (finding that wives who have better jobs than their husbands face an increased risk of assault). Women who are battered also may be harassed by their partners at work. Melanie Shepard and Ellen Pence, *supra*, at 57-59; Lisa Freedman, *supra*, at 52. These women can lose their jobs because of the abusers' disruptive behavior. Many victims frequently are absent from work because of injury inflicted

by their batterers. One study found that 96 percent of the women who were working while involved in an abusive relationship experienced problems at work. Joan Zorza, supra, State of the Law at 384. More than half of their abusers harassed them over the telephone. Id. Over half of the women reported missing work, being reprimanded, or having trouble with job performance. Id. at 385. It is not surprising that the rate of unemployment among battered women is higher than that of other women. See Michael J. Strube and Linda S. Barbour, supra, at 786.

The plight of battered women illustrates the burden the California statute places on the right to travel. A variety of factors make abused women at least temporarily indigent. If they are to be provided with benefits well below the existing California grant levels, they may be forced to remain in an abusive relationship rather than exposing their children to the dangers of poverty. See discussion supra at 19-20. Alternatively, they may find themselves homeless or they may be driven back to their abusive partners, in either case seriously endangering themselves and their children.

IV. A REDUCTION IN AFDC BENEFITS BASED ON RESIDENCY WILL PENALIZE TRAVEL AND PERPETUATE DOMESTIC VIOLENCE BECAUSE ECONOMIC INDEPENDENCE IS A SIGNIFICANT FACTOR IN BATTERED WOMEN'S ABILITY TO ESCAPE AND REMAIN SEPARATE FROM THEIR ABUSERS

It is widely recognized that economic independence plays a major factor in battered women's decisions to leave a life of domestic violence behind. As described above, many women remain trapped in abusive relationships because they lack resources to leave, and fear the poverty

they may face. Battered women who leave even severely violent relationships often return to their batterers for economic reasons. Casey, 505 U.S. ___, 112 S. Ct. at 2828. Without adequate financial assistance, battered women are forced to accept violence as an inevitable fact of life.

Economic dependence on battering men serves to keep battered women locked into violent relationships. "The fear of poverty or a greatly lowered standard of living is a major reason why women stay in abusive situations" Ginny NiCarthy, Getting Free: A Handbook for Women in Abusive Relationships 11 (1986). Women are more likely to stay in an abusive relationship when the economy is bad and unemployment is high because it will be more difficult for them to find work and support themselves and their children. Patricia Horn, supra, at 13. In addition, services targeted to battered women provide only emergency help, insufficient to allow women to support their families and move toward economic independence. See id. at 21-22 (most battered women's shelters allow only eight week stay). As a result, many battered women are forced to allow "economic needs [to] take precedence over [their] physical and emotional need to be free from abuse." Ida M. Johnson, Economic, Situational, and Psychological Correlates of the Decision-Making Process of Battered Women, 73 Fam. in Soc'y: J. of Contemp. Human Serv. 168, 175 (1992). See Michael J. Strube and Linda S. Barbour, Factors Related to the Decision to Leave an Abusive Relationship, 46 J. of Marriage and the Fam. 837, 837 (1984).

Adequate income supports do make a difference to women who have left batterers. The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources

to survive without him. Edward W. Gondolf and Ellen R. Fisher, supra, at 95-96; see also Ida M. Johnson, supra, at 174-75; Lewis Okun, supra, at 55 (citing studies that find women commonly return because they lack economic resources); B.E. Aguire, Why Do They Return? Abused Wives in Shelters, 30 Social Work 350, 350 (1985).

Battered women must have a "sound bridge out of poverty," Edward W. Gondolf and Ellen R. Fisher, supra, at 94, in order to afford to live safely and separately from their abusive partners. Battered women who have risked and survived separation assault nevertheless will be penalized by the durational residency requirement. The inadequacy of the financial assistance provided to new residents may force them to return to violent situations. Alternatively, the denial of adequate assistance may result in homelessness. As noted earlier, none of the Plaintiffs were able to find housing affordable with the reduced AFDC grant. See discussion supra at 18; see also Joan Zorza, supra, Homelessness at 422 (31 percent of abused women in New York City shelters returned to their batterers primarily because they could not locate long-term housing).

The denial of adequate financial assistance to families by operation of the California durational residency requirement heightens the financial obstacles facing battered women. The threat of homelessness and poverty resulting from a lack of available resources will deter battered women's exercise of the right to travel. See Shapiro, 394 U.S. at 629. Furthermore, as a result of Section 11450.03 of the California Welfare and Institutions Code, women who have crossed state lines to escape domestic violence and have established residency in California will be denied the financial assistance deemed minimally adequate for survival in California. Because differential AFDC benefits

for newly-arrived residents would deprive battered women of the resources and alternatives necessary to escape abuse, their exercise of the right to travel is penalized. See Maricopa, 415 U.S. at 258-59.

CONCLUSION

For the reasons stated, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX I

STATEMENTS OF INTEREST OF AMICI CURIAE

American Medical Women's Association, Inc. ("AMWA"), a nonprofit organization of 13,000 women physicians and medical students, has a particular concern with all issues that affect the health of women. AMWA recognizes that domestic battering is the single greatest cause of injury to women and that it frequently goes undiagnosed and untreated, leaving the victim exposed to repeated violence. The Association deplors this victimization and abuse, and believes that a significant result of the application of the California durational residency requirement is to inhibit women's pursuit of safety.

AYUDA, Inc. is a non-profit legal services agency, founded in 1971, which offers legal representation and social service assistance to indigent Spanish-speaking and foreign born residents of the District of Columbia. Since 1985, Ayuda has represented 98% of the Spanish-speaking battered women who turn to the D.C. courts for protection, offering assistance to thousands of immigrant and refugee battered women and children who reside in the D.C. metropolitan area. In addition, Ayuda played a central role in securing passage of the Violence Against Women Act and worked particularly on provisions that assist battered immigrant women and children and interstate enforcement of protection orders. Ayuda understands that to survive domestic violence, battered women often must cross state lines in their search for shelter and safety from continued abuse. Without the ability to survive economically, few battered women succeed in their attempts to leave their batterers. We are concerned about the impact this case will have on battered women's ability to flee violence.

California Women Lawyers ("CWL") is one of the largest women's bar associations in the nation, representing over 30,000 women lawyers. CWL's mission is to promote the advancement of women and the achievement of gender parity. CWL has involved itself in both the legislative and judicial processes for the betterment of the legal climate for women in California. Specifically, CWL is committed to the fair and equal treatment of persons of all genders and financial means.

Now in its twenty-first year, **Equal Rights Advocates ("ERA")** is one of the country's oldest women's law centers. ERA is dedicated to empowerment of women through the establishment of their economic, social, and political equality. Beginning in 1974 as a teaching law firm specializing in issues of sex-based discrimination, ERA has evolved into a legal organization with a multifaceted approach to addressing women's issues including litigation, advice and counseling, public education and public policy initiatives. ERA's mission includes promoting economic independence of women, including those women who need to rely on government support during times of transition.

The Legal Action Center for the Homeless is a ten-year-old organization that has worked to assist the homeless and other disenfranchised New Yorkers through direct assistance and impact litigation. The **Family Violence Project of the Legal Action Center for the Homeless** was initiated in October 1993 by staff with 15 years of experience working with and for battered women and their children. Current work of the Family Violence Project includes system reform and advocacy with the New York City Police Department, the Child Welfare Administration and the Health and Hospitals Corporation, as well as direct assistance to battered women and their children.

The **National Battered Women's Law Project**, a program of the National Center on Women and Family Law, acts as legal backup to Legal Services programs and battered women's programs and provides pro bono information in all fifty states. The Project serves as an information clearinghouse for advocates, attorneys and policymakers on legal issues facing battered women; produces manuals, handbooks, public education materials and resource packets on these legal issues; analyzes federal and state issues which affect battered women; assists advocates, policymakers and attorneys on issues faced by battered women; and reports on legal and legislative developments with respect to battered women's issues in The Women's Advocate, the bi-monthly newsletter of the National Center on Women and Family Law. The Project represents the interests of battered women, who are frequently reduced to poverty and homelessness on account of the physical, emotional, sexual and economic abuse inflicted upon them by their abusive partners; many of these women are forced to flee to other states in order to protect themselves and their children from further abuse.

The **National Council of Negro Women, Inc.**, established in 1935, is a voluntary non-profit membership organization committed to the advancement of educational, social, and economic opportunities for African American women. Through our thirty-four National African American Women's affiliate organizations, and 250 community based sections in forty-two states, NCNW has an outreach to four million women. NCNW supports the NOW Legal Defense and Education Fund amicus brief in Anderson v. Green, which argues that California's imposition of a durational residency requirement upon recipients of Aid to Families with Dependent Children will harm women crossing state lines in order to escape abusive relationships. As a women's organization committed to

promoting wellness among African American women, NCNW opposes any legal barriers that would infringe on a woman's ability to sustain herself and her children after fleeing an abusive relationship.

The **National Organization for Women** was founded in 1966 as a political advocacy and action organization working to end all forms of discrimination against women. The organization currently has 250,000 members located across the United States and over 600 chapters which comprise our activist base. We have worked since our inception for the rights of low-income women, as we oppose any welfare measures which have the effect of harming poor women and their children. The statute in question in Anderson v. Green discriminates against women fleeing domestic violence by denying them the same welfare benefits as California residents.

The **National Women's Health Network** is a non-profit membership group which advocates for better federal health policies for women. The Network works to expand access to health care services for poor women, older women, women of color, lesbians, rural women and disabled women. The Network is supported by 16,000 individual and 300 organizational members representing over 500,000 women and men. The Network believes that the decision in this case will have implications on women's access to government sponsored health care.

The **National Women's Law Center** ("Center") is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women, including employment, education, family support, income security, reproductive rights and health -- with special attention given to the concerns of low-income women. In

its work on income security issues, the Center has fought to ensure that the statutory and constitutional rights of applicants for, and recipients of, Aid to Families with Dependent Children benefits are advanced and protected. The Center is and will continue to be involved in all efforts to ensure that the AFDC system adequately addresses the needs and concerns of poor women and their children.

The **Northwest Women's Law Center** is a non-profit public interest legal organization based in Seattle, Washington, that works to advance the legal rights of women in the Pacific Northwest through litigation, education, legislative advocacy and a free legal information and referral phone service. Since its founding in 1978, one of the Law Center's priorities has been to protect and advance the rights of women and children who are victims of domestic violence. The Law Center has a long history of litigation and participation as amicus curiae in cases around the country on behalf of victims of domestic violence who seek to flee violent relationships and establish economic independence.

NOW Legal Defense and Education Fund ("NOW LDEF") is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. Eliminating domestic violence and improving financial supports for poor women are major concerns of NOW LDEF.

Planned Parenthood Federation of America, Inc. (PPFA) is the oldest and largest voluntary organization dedicated to the provision of reproductive health care and advocacy of reproductive rights. Incorporated in 1922 as a

New York not-for-profit corporation, PPFA consists of a national office and 164 autonomous affiliate members in 49 states who operate over 900 clinics nationwide, providing medical and educational services to over 4,000,000 people. Planned Parenthood believes that welfare reform, and all social welfare policies, must respect individual dignity, encourage self-empowerment, and ensure the fundamental right to reproductive choice.

Women Lawyers Association of Los Angeles is a local bar association with more than 1,000 members. Founded in 1919, WLALA includes in its statement of purpose furthering the understanding of and support for the legal rights of all women and promoting equality and equal opportunity for all people. WLALA has long fought for the rights of battered women. We oppose the statute at issue in this case because it undermines the efforts of battered women who move to our state for the support of family and friends by denying them the full AFDC benefits in California.

The **Women's Economic Agenda Project ("WEAP")** was founded eleven years ago in Oakland, CA to advocate for economic rights of low-income women and their families throughout the state. Since its foundation, WEAP has trained thousands of women in leadership development, offered seminars on economic rights and advocated for poor women at all levels of California society. WEAP wishes to join the amicus brief about the effects of two-tiered welfare system on battered women, since WEAP encounters this population among its constituency every day and are only too well aware of the inequities of this system. WEAP represents the perspective of over four-million poor women and their families throughout California.

The **Women's Law Center, Inc.** is an advocacy organization whose membership of 400 consists of attorneys, judges, and other concerned persons in the State of Maryland. In existence since 1971, the goal of the Women's Law Center is to promote the legal rights of women through litigation, legislation and education. The Women's Law Center has a long history of involvement with domestic violence, including the creation with other groups of a domestic violence legal clinic, training of attorneys to handle domestic violence cases on a *pro bono* basis, and operation of a Family Law Hotline. The Women's Law Center believes the issues raised in the Anderson v. Green case, as they affect victims of domestic violence, are critical to the legal rights of women.

The **Women's Law Project** is a Philadelphia-based non-profit public interest legal center dedicated to improving the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Since its founding in 1974, the Law Project has engaged in extensive activities challenging gender discrimination in employment, education, insurance, and in family matters relating to custody, support, domestic violence and divorce. Family law, in particular, has been a major focus of both the telephone counseling service, which handles approximately 4000 inquiries a year relating to some aspect of family law, and the Law Project's litigation efforts, which include both original litigation and participation as amicus curiae in numerous family law cases.

Founded in 1971, the **Women's Legal Defense Fund ("WLDF")** is a national advocacy organization located in Washington, D.C., that works at the federal and state levels to promote policies that help women achieve equal opportunity, quality health care, and economic and physical

security for themselves and their families. WLDF has worked for more than a decade for child support and welfare reforms that assist poor families, and has participated as amicus curiae in cases challenging punitive and coercive welfare policies. WLDF also advocates for policies to combat domestic violence.

The YWCA of the U.S.A. is the oldest women's membership organization in the nation. Founded in 1858, it currently serves over two million girls, women and their families through 400 YWCAs in 4,000 locations throughout the country. Strengthened by diversity, the Association draws together members who strive to create opportunities for women's growth, leadership and power in order to attain a common vision: peace, justice, freedom and dignity for all people. Because we advocate for public policies that ensure battered women the right to equal protection and the right to travel across state lines to avoid stalking and further abuse, the YWCA of the U.S.A. supports the position taken in the amicus curiae brief.